

Remarks

The present paper is submitted in response to an Advisory Action dated February 24, 2004. In the Advisory Action, the Examiner maintained the rejection of claims 1-3, 7-11, 15-17 and 19-21 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-20 of U.S. Patent No. 6,443,166.

With respect to the rejection of the claims under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,443,166, Applicants respectfully submit that the attached terminal disclaimer should overcome the rejection thereto.

Applicants respectfully submit that the filing of the terminal disclaimer is to obviate the rejection based on the judicially created doctrine obviousness-type double patenting and is not an admission of the propriety of the rejection. *See Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). Applicants further respectfully submit that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." *Id.* at 874, 1394-95.

In view of the foregoing remarks and the attached terminal disclaimer, Applicants respectfully submit that all of the claims in the application are in allowable form and that the application is now in condition for allowance. Applicants further submit that neither further search nor consideration would be necessitated by entry of this response. Therefore, entry is proper and should be effected.

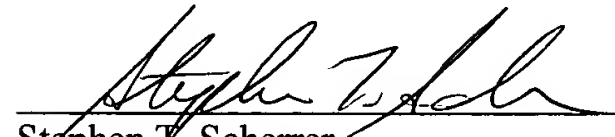
In re Tunney, et al.
U.S. Patent Application No. 09/901,514

Respectfully submitted,

McDERMOTT, WILL & EMERY

Date: March 12, 2004

McDERMOTT, WILL & EMERY
227 West Monroe Street
Chicago, Illinois 60606-5096
Telephone: (312) 372-2000


Stephen T. Scherrer
Registration No. 45,080
Attorney for Applicants

CHI99 4260916-1.047440.0041